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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 MICHAEL LYNN WATERS,

12 Plaintiff,

13 v.

14 A.W. COOK, et al,

15 Defendants.  
16

C 07-4683 CRB (PR)

**[PROPOSED] ORDER  
GRANTING DEFENDANTS'  
MOTION TO DISMISS**

17 This is a civil-rights suit filed under 42 U.S.C. § 1983 by a state prisoner, Plaintiff Michael  
18 Lynn Waters. Plaintiff alleges that Defendants C. Wilber, F. Jacquez, R. Horel, J. Robertson, D.  
19 Melton, M. Cook, C. Patten, R. Bell, and R. Linfor stopped honoring his single-cell status and  
20 placed him in the behavioral management unit (BMU). (Compl. 4.) Plaintiff essentially raises  
21 Eighth Amendment claims based on deliberate indifference to his safety needs. (*Id.*)

22 Defendants move to dismiss under Rule 12(b) because Plaintiff failed to exhaust his  
23 available administrative remedies properly before filing suit as required by the Prison Litigation  
24 Reform Act (PLRA). 42 U.S.C. § 1997e(a); *see Wyatt v. Terhune*, 315 F.3d 1108, 1119–20 (9th  
25 Cir. 2003). Because exhaustion is mandatory under the PLRA, Plaintiff is not entitled to file a  
26 complaint until he has pursued an inmate appeal addressing the claims in his complaint through  
27 the Director's Level of Review. 42 U.S.C. § 1997e(a); *Woodford*, 126 S. Ct. at 2382.

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1 The California Department of Corrections and Rehabilitation (CDCR) has a four-level  
 2 administrative-appeals process that permits its inmates to grieve "any departmental decision,  
 3 action, condition, or policy which they can demonstrate as having an adverse affect upon their  
 4 welfare." Cal. Code Regs. tit. 15, § 3084.1(a). The four levels of appeal include: (1) an  
 5 informal level, (2) a first formal level of review, (3) a second-level review to the institution head  
 6 or designated representative, and (4) a final third-level appeal to the Director of the CDCR or  
 7 designated representative. *Id.* at § 3084.5. A decision at the Director's level constitutes  
 8 exhaustion of an inmate's administrative remedies. *Id.* at § 3084.1(a).

9 Defendants' motion to dismiss shows that Plaintiff exhausted no administrative grievance  
 10 concerning his claims against Defendants. Plaintiff attaches an administrative appeal to his  
 11 complaint, however, this appeal requested single-cell status and does not grieve any facts related  
 12 to the deliberate indifference claims in this suit. (Compl. Ex. K.) During the time period at  
 13 issue, from March 6, 2006 to the filing of this action, the only administrative grievance that  
 14 Plaintiff exhausted involved a medical issue and did not include allegations concerning deliberate  
 15 indifference to safety. (Grannis Decl. Ex. B.) Therefore, Plaintiff has not properly exhausted his  
 16 available administrative remedies concerning the allegations set forth in his complaint. 42  
 17 U.S.C. § 1997e(a).

18 After full consideration of all pleadings and good cause appearing, the Court grants  
 19 Defendants' motion to dismiss in its entirety.

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 21 IT IS SO ORDERED.

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 23 Dated: \_\_\_\_\_

24 HON. CHARLES BREYER  
 25 United States District Judge  
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